

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA
SAVANNAH DIVISION**

KEVIN J. PAUL, SR. and GLORIA
BYNES,

Plaintiffs,

CHEDDAR'S SCRATCH KITCHEN
and DARDEN RESTAURANT, INC.,

Defendants.

CV420-004

ORDER

Plaintiffs, appearing *pro se*, have submitted a complaint alleging discrimination under 42 U.S.C. §2000a. Doc. 1. They seek to proceed *in forma pauperis* (IFP). Doc. 2. Their joint application to proceed IFP, however, is deficient and requires amendment and clarification.

The application includes multiple inconsistencies and omissions. As income, plaintiffs represent that they earn \$778.00 bi-weekly, but do not identify their employers. Doc. 2 at 1. Additionally, plaintiffs list as an expense “car payment,” but do not claim the associated vehicle as property or the related loan as a debt. *Id.* at 2. They also identify several categories of monthly expenses, but only categorize costs related to dependents. *Id.* Wary of indigency claims where information appears to

have been omitted, and cognizant of how easily one may consume a public resource with no financial skin in the game,¹ this Court demands supplemental information from dubious IFP movants. *See, e.g., Kareem v. Home Source Rental*, 986 F. Supp. 2d 1345 (S.D. Ga. Dec. 9, 2013); *Robbins v. Universal Music Grp.*, 2013 WL 1146865 at *1 (S.D. Ga. Mar. 19, 2013).²

To that end, it tolerates no lies. *Ross v. Fogam*, 2011 WL 2516221 at *1 (S.D. Ga. June 23, 2011) (“Ross, a convicted criminal, chose to

¹ “[A] litigant whose filing fees and court costs are assumed by the public . . . lacks an economic incentive to refrain from filing frivolous, malicious, or repetitive lawsuits.” *Neitzke v. Williams*, 490 U.S. 319, 324 (1989). Courts thus deploy appropriate scrutiny. *See Hobby v. Beneficial Mortg. Co. of Va.*, 2005 WL 5409003 at *7 (E.D. Va. June 3, 2005) (debtor denied IFP status where, although she was unable to find employment as a substitute teacher, she had not shown she is unable to work and earn income in other ways); *In re Fromal*, 151 B.R. 733, 735 (E.D. Va. 1993) (denying IFP application where debtor was licensed attorney and accountant and she offered no reason why she cannot find employment), cited in *In re Zow*, 2013 WL 1405533 at *2 (Bkrtcy. S.D. Ga. Mar. 4, 2013) (denying IFP to “highly educated” bankruptcy debtor who, inter alia, had “not shown he is physically unable to work or earn income in other ways.”); *Nixon v. United Parcel Service*, 2013 WL 1364107 at *1–2 (M.D. Ga. Apr. 3, 2013) (court examined income and expenses on long-form IFP affidavit and determined that plaintiff in fact had the ability to pay the court’s filing fee); *Swain v. Colorado Tech. Univ.*, 2014 WL 3012730 at *1 n. 1 (S.D. Ga. May 14, 2014).

² *See also Lister v. Dep’t of Treasury*, 408 F.3d 1309, 1313 (10th Cir. 2005) (court did not abuse its discretion by denying status to Social Security benefits claimant seeking judicial review of Commissioner’s benefits denial; claimant, after having been specifically instructed on how to establish IFP status, failed to fill out proper forms or otherwise provide court with requisite financial information); *Mullins v. Barnhart*, 2010 WL 1643581 at *1 (D. Kan. Mar. 30, 2010) (denying, after scrutinizing IFP affidavit’s financial data, leave to proceed IFP on financial ability grounds).

burden this Court with falsehoods, not honesty. The Court thus rejects Ross's show cause explanation, as it is clear that he purposefully chose to disguise his filing history and financial status.”); *Johnson v. Chisolm*, 2011 WL 3319872 at *1 n. 3 (S.D. Ga. Aug. 1, 2011) (“This Court does not hesitate to invoke dismissal and other sanctions against inmates who lie to or otherwise deceive this Court.”); *see also Moss v. Premiere Credit of North America, LLC*, 2013 WL 842515 (11th Cir. Mar. 6, 2013) (“Moss's [IFP on appeal] motion is denied because her allegation of poverty appears to be untrue in light of her financial affidavit and filings in the district court.”).³ As plaintiffs’ application for IFP status is not sufficiently clear, they are **DIRECTED** to amend their application to disclose⁴ the following information within 14 days from the date of this Order:

³ Furthermore, liars may be prosecuted. *See United States v. Dickerson*, CR608-36, doc. 1 (S.D. Ga. Dec. 11, 2008) (§ 2255 movant indicted for perjury for knowingly lying in his motion seeking collateral relief from his conviction); *id.*, doc. 47 (guilty verdict), cited in *Colony Ins. Co. v. 9400 Abercorn, LLC*, 866 F. Supp. 2d 1376, 1378 n. 2 (S.D. Ga. 2012) (collecting sanction cases).

⁴ Several important points must be underscored here:

First, proceeding [IFP] in a civil case is a privilege or favor granted by the government. *Rowland v. California Men's Colony, Unit II Men's Advisory Council*, 506 U.S. 194, 198 (1993). Second, the statute reads that the court “may authorize the commencement” of an action. 28 U.S.C. § 1915(a)(1). The grant, denial, or other decision concerning an

- (1) The identities of plaintiffs' current employer or employers or, if not currently employed, the source of any income reflected in the IFP application;
- (2) Any assets or property owned (e.g., vehicles, jewelry, or real property);
- (3) An itemization of monthly expenses; and
- (4) Any debts or other financial obligations (e.g. car loans).

[IFP] application requires the court to exercise discretion. *Denton v. Hernandez*, 504 U.S. 25, 31 (1992); *see also Lee v. McDonald's Corp.*, 231 F.3d 456, 458 (8th Cir. 2000) (explaining the purpose of 28 U.S.C. § 1915 and stating the decision of whether to grant or deny in [IFP] s status under 28 U.S.C. § 1915 is discretionary).

Lafontaine v. Tobin, 2013 WL 4048571 at *1 (N.D. Iowa Aug. 9, 2013) (emphasis added); *see also Marceaux v. Democratic Party*, 79 F. App'x 185, 186 (6th Cir. 2003) (no abuse of discretion when court determined plaintiff could afford to pay the filing fee without undue hardship because he has no room and board expenses, owns a car, and spends the \$250.00 earned each month selling plasma on completely discretionary items).

Lafontaine also extended to non-prisoner IFP movants a pay-to-play, installment payment plan analogous to what Congress imposed upon prisoners under its Prison Litigation Reform Act (PLRA), which is expressed in statutory provisions like § 1915 (a)(1), (b)(1)(2). *Lafontaine*, 2013 WL 4048571 at *2; *see also Kelner v. Harvin*, 2010 WL 2817262 at *1 n. 5 (D. Kan. July 16, 2010) (It has been held that the exhaustion, full/initial partial payment, and three-strikes provisions of the current [IFP] statutes do not apply to [IFP] litigants who are not prisoners. Nevertheless, several courts including the Tenth Circuit have applied this subsection which does not refer to prisoners, to suits brought by non-prisoners."). The Court is considering likewise here, since cost-free litigation too easily enables recreational, if not nuisance, litigation. That further necessitates more detailed financial data from the plaintiff.

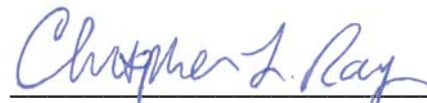
Though parties may jointly bring an action arising from a common “transaction, occurrence, or series of transactions or occurrences” or involving a common “question of law or fact,” the court must be satisfied that each individual seeking IPF status qualifies. Fed. R. Civ. Pro. 20(a)(1). Though the application to proceed IFP is signed by both plaintiffs, it is unclear whether the information listed relates to both or only one litigant.⁵ Plaintiffs are **DIRECTED** to file separate applications to proceed IFP reflecting their respective finances or, if plaintiffs comingle their finances—shared assets, expenses, debts and bank accounts—to clarify their relationship.

Providing this information will better illuminate Plaintiffs’ true financial condition. In that regard, they must again declare the facts they plead to be true and sign their respective names to their declarations—

⁵ The Court has a similar concern with plaintiffs’ Complaint. Though a party may proceed *pro se*, a non-attorney is generally not permitted to represent the interests of another party. See 28 U.S.C. § 1654 (“In all courts of the United States the parties may plead and conduct their own cases personally or by counsel as, by the rules of such courts, respectively, are permitted to manage and conduct causes therein.”); see also *Jacox v. Dept. of Def.*, 2007 WL 118102 at *2 (M.D. Ga. Jan. 10, 2007) (“Consistent with the foregoing, therefore, the Court finds that 28 U.S.C. § 1654 requires pro se litigants to conduct their own cases personally and does not authorize nonlawyers to conduct cases on behalf of individuals.”). The Court reminds plaintiffs that, if unrepresented by counsel, each must represent their own interests in this case.

under penalty of perjury. If they do not use a preprinted IFP form to respond, they must insert the following language above their signature: “I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date).” 28 U.S.C. § 1746(1). The Clerk is **DIRECTED** to serve with this Order two blank IFP forms for Plaintiffs’ convenience. Failure to comply with this directive will result in a recommendation of dismissal on IFP-deficiency grounds alone. *Kareem v. Home Source Rental*, 2014 WL 24347 at *1 (S.D. Ga. Jan. 2, 2014).

SO ORDERED, this 8th day of January, 2020.



CHRISTOPHER L. RAY
UNITED STATES MAGISTRATE JUDGE
SOUTHERN DISTRICT OF GEORGIA